IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Dornar Harsh & Anr. Vs. Ramesh Chandra Menaria

S.B.CR.MISC. PETITION NO.1135/2005

DATE OF ORDER :: September 04, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Dr. Shailendra Kala for the petitioners.

Mr.Rakesh Arora, for non-petitioner.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners, who are minors aged 2 and 1 year respectively, through their mother, have challenged the order dt. 1.8.2005 passed by the Judicial Magistrate No.2, Bhilwara (for short 'the trial court' hereinafter), whereby the application filed by the present petitioners against their father non-petitioner under section 125 Cr.P.C. seeking monthly allowance of interim maintenance, was dismissed.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It is not disputed that the mother of the petitioners is a government employee and drawing salary of Rs.6972/- per month, apart from monthly salary, which the mother of the petitioners is drawing, she has her own house at Kota and is getting Rs.2000/- per month as rent. Thus, monthly income of the mother of the petitioners is prima facie nearing to Rs.9000/-.

It is contended by the learned counsel for the petitioners that in view of the decision of the Hon'ble Supreme Court in Padmja Sharma vs. Ratan Lal Sharma, **AIR 2000 SC 1398,** both the parents of child when employed are obliged to pay maintenance and not only father of child, in proportion of their salaries. It is contended by the learned counsel for the petitioners that the trial court dismissed the application on the ground that the mother of the petitioners is capable to maintain the petitioners and the interim maintenance was not awarded against the non-petitioner.

Learned counsel appearing for the non-petitioner has contended that an application under section 13 of the Hindu Marriage Act has been filed by the mother of the petitioners, who

is wife of non-petitioner in the Court of Distt. Judge, Bhilwara, wherein she categorically stated that the non-petitioner is in heavy debt and many borrowers are harassing the non-petitioner in connection with the demand of money due to him. This, according to the learned counsel for the non-petitioner, shows that the non-petitioner has no source of income and he is already in heavy debt. In the circumstances, therefore, it cannot be said that the non-petitioner has any source of income. From the order impugned, it nowhere appears the income of the non-petitioner. It is true that the parents of the child i.e. mother as well as the father are obliged to maintain their child but in the instant case, the petitioners claim for interim maintenance and, therefore, in my view without there being any evidence of the income of the non-petitioner, directing to pay the interim maintenance cannot be said to be proper.

The petition is, therefore, dismissed keeping in view the income of the mother of the petitioners. However, the trial court is directed to dispose of the main application within six months and direct the payment of monthly allowance keeping in view the decision of the Hon'ble Supreme Court in Padmja Sharma vs. Ratan Lal Sharma (supra).

[H.R.PANWAR],J.

m.asif/-